IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. CIVIL WRIT PETITION NO.4170/07
Vishnu Kumar Gupta Vs. Civil Judge (JD) & Judicial Magistrate & Ors.

Date of order : 10/12/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri R.L. Agarwal with
Shri N.L. Gupta for the petitioner.
Shri Jinesh Jain for the respondent.

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Heard learned counsel for the parties.

The petitioner has filed this writ petition against the order dated 21.4.2007 whereby his application for framing of four additional issues has been rejected by the trial court.

Learned counsel for the petitioner has argued that he has in the written statement taken a specific plea that the construction work has been raised

by him on the land purchased from Municipal Board, Hindaun as per the lease deed and on the basis of site plant of the land enclosed with the lease deed, permission to raise the construction has been granted by the Municipal Board. Earlier in regard to this very road, a suit being no.68/96 titling Ajay Kumar Vs. Khoob Chand was decided by the trial court vide judgment dated 5.3.2001. As per the finding recorded by the trial court in suit no.68/96, the width of that road is held to be 20 feet whereas in the present suit, the same road is being claimed to be 30 feet wide by the plaintiff-petitioner. According to the petitioners, they were predecessor-in-title of the plaintiff and defendant in this case. In spite of defendant having

raised these pleas in the written statement, the learned trial court has not framed the issues. Learned counsel for the petitioner has argued that the plaintiff has no locus standi in the matter and that the suit has been filed in order to harass him for which the defendant is entitled to damages.

Learned counsel for the respondent opposed the writ petition and argued that the question raised by the petitioner, substantially covered by the issues and therefore no additional issues need to be framed. It was argued that the plaintiff was very much affected by the construction raised by the defendant therefore he has locus standi to file suit and it cannot be said that the suit has been filed to harass the defendant. It was submitted

that the width of the road is 30 feet.

Having heard the learned counsel for the parties and perused the impugned order, I find that according to provisions contained in Order 14(2) CPC, the issues which arise out of the pleadings of the parties namely the assertion made by one party and denied by the other have to be framed by the Court. When the petitioner has asserted that he has purchased the land from Municipal Board and that he has been issued a lease deed along with site plan and that constructions were raised by him on the basis of permission granted by the Municipal Board wherein the width of the road has been indicated and the earlier suit on the same subject matter was decided by this Court in which also the issue regarding

width of the road is there, there is no escape for the trial court to frame the issue nos.6(b) and 6(c) proposed by the defendant in the facts of the case, whereas issue nos.6(a) and 6(d) do not appear to be justified.

I therefore while setting aside the impugned order partly allowed the writ petition to the extent that aforesaid issue nos.6(b) and 6(c) proposed by the defendant petitioner be framed by the trial court in the suit.

(MOHAMMAD RAFIQ), J.

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